

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.: 4:20-cv-01383-MWB

EVANGELICAL COMMUNITY
HOSPITAL

and

GEISINGER HEALTH,

Defendants.

JOINT NOTICE OF AMENDED PROPOSED FINAL JUDGMENT

Pursuant to Paragraph 6 of the Stipulation and Order (Dkt. 47) entered by the Court on March 10, 2021, Plaintiff, United States of America (“United States”), and Defendants, Evangelical Community Hospital (“Evangelical”) and Geisinger Health (“Geisinger”), jointly provide notice to this Court regarding an amendment to the proposed Final Judgment. This amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment.

After filing the proposed Final Judgment, it was discovered that the Amended and Restated Collaboration Agreement and its attachments inadvertently included legacy provisions that did not conform to the proposed Final Judgment. Those legacy provisions—which appeared in previous versions of the collaboration agreement but which Geisinger and Evangelical agreed to eliminate as part of their settlement with the United States—have now been deleted. In the process of reviewing these documents to ensure that we had identified and corrected for all of these legacy provisions, the parties also identified and corrected a small number of provisions in

these documents that contained either typographical errors or phrasing that did not adhere as closely to the language of the proposed Final Judgment as it should have.

To effectuate these corrections, the United States submits to the Court an amended proposed Final Judgment. The amended proposed Final Judgment, submitted herewith and attached as Exhibit 1, contains only one change: an amendment to the definition of the “Amended and Restated Collaboration Agreement” to reflect the date of execution and title of this new, updated agreement. No other changes were made to the proposed Final Judgment.

For the Court’s convenience, a redline comparison to the proposed Final Judgment filed on March 3, 2021, is attached hereto as Exhibit 2. A Second Amended and Restated Collaboration Agreement dated May 10, 2021 and the attachments to that agreement (collectively, the “Second Amended and Restated Collaboration Agreement”) are attached hereto as Exhibit 3, and a redline showing the changes to the Amended and Restated Collaboration Agreement and its attachments is attached hereto as Exhibit 4.

I. Background

On February 1, 2019, Defendants entered into a partial acquisition agreement (the “Collaboration Agreement”) pursuant to which Geisinger would, among other things, acquire 30% of Evangelical. On August 5, 2020, the United States filed a civil antitrust Complaint seeking to rescind and enjoin the Collaboration Agreement. On March 3, 2021, before Defendants responded to the Complaint, the United States filed a Stipulation and Order (Dkt. 45-1) and proposed Final Judgment (Dkt. 45-2), which are designed to remedy the loss of competition alleged in the Complaint. Under the proposed Final Judgment, Defendants are, *inter alia*, required to cap Geisinger’s ownership interest in Evangelical at 7.5% and eliminate other

entanglements between them.¹ The proposed Final Judgment also refers to an amended collaboration agreement that Defendants entered into to replace the original agreement and to reflect the remedy set out in the proposed Final Judgment.²

In accordance with the Stipulation and Order, pending entry of the Final Judgment by the Court, Defendants must comply with the proposed Final Judgment and with “any amended proposed Final Judgment agreed upon in writing by the United States and Defendants and submitted to the Court.” Stipulation and Order ¶ 6 (Dkt. 47). Because the parties’ obligations under the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, are ongoing and the comment period remains open, the United States has not moved to enter the proposed Final Judgment.

II. The Amended Proposed Final Judgment

On March 3, 2021, the United States filed the proposed Final Judgment with the Court. As part of that filing, the United States also filed the Defendants’ Amended and Restated Collaboration Agreement and Evangelical’s Amended and Restated By-laws and Amended and Restated Articles of Incorporation. Each of these documents were intended to conform to the terms of the proposed Final Judgment. Subsequent to filing these documents, the parties discovered that certain provisions of these documents had not been modified to reflect the terms of the proposed Final Judgment. As the parties worked together to remove these inadvertent errors, they also discovered and corrected various typographical errors and ensured the language effectively reflected the terms agreed to in the proposed Final Judgment.

In order to correct the errors that have since been identified in the Amended and Restated Collaboration Agreement and its attachments, the United States and Defendants file, with this Joint Notice, amended versions of these documents. Each of these documents have been

¹ See Proposed Final Judgment § IV.

² See Proposed Final Judgment § IV(A).

amended to remove vestiges of the original Collaboration Agreement, and to correct for other errors in the language, including typographical errors, to conform them with the relief agreed to by the parties and contained in the proposed Final Judgment. Defendants have also amended their provider services agreement, filed herewith as an addendum to the collaboration agreement, to reflect their execution of the Second Amended and Restated Collaboration Agreement.

Given these changes, Paragraph II(A) of the proposed Final Judgment must be amended to reflect the corrected version of the Amended and Restated Collaboration Agreement. The United States and Defendants have agreed to modify Paragraph II(A) of the proposed Final Judgment as follows (changes shown in red):

“Amended and Restated Collaboration Agreement” means the “Second Amended and Restated Collaboration Agreement” entered into by Geisinger and Evangelical on **May 10, 2021**.

The amended proposed Final Judgment is identical in all other respects to the original proposed Final Judgment filed with the Court on March 3.

The amendment to the proposed Final Judgment does not affect the substance of the remedy contained in the original proposed Final Judgment. In fact, it does not change the remedy in any material way. Accordingly, the United States is not required to extend the Tunney Act comment period. However, in order to afford the public time to review this filing, the United States will receive and consider any additional comments received in the next twenty (20) days. Under the APPA, after the United States has published its response to any comments received and has made a motion for entry, the Court may enter the amended proposed Final

Judgment without further proceedings if the Court determines entry is in the public interest. 15 U.S.C. § 16(e).

At this time, the United States is not moving for entry of the amended proposed Final Judgment. The United States has received at least four comments and thus will consider and respond to those comments, and any others it receives, as required by the Tunney Act, after the comment period has closed, and will then move to enter the amended proposed Final Judgment should the United States continue to believe it is in the public interest.

Dated: May 17, 2021

Respectfully submitted,

FOR PLAINTIFF
UNITED STATES OF AMERICA

/s/

NATALIE MELADA
DAVID M. STOLTZFUS
CHRIS HONG
DAVID C. KELLY
GARRETT LISKEY

Attorneys for the United States
U.S. Department of Justice
Antitrust Division
450 Fifth Street, NW, Suite 4100
Washington, DC 20530
Tel: (202) 353-1833
Email: natalie.melada@usdoj.gov

FOR DEFENDANT
GEISINGER HEALTH:

/s/

MCDERMOTT WILL & EMERY, LLP
Stephen Y. Wu (*pro hac vice*)
444 West Lake Street, Suite 4000
Chicago, IL 60606-0029
Michelle S. Lowery (*pro hac vice*)
2049 Century Park East, Suite 3200
Los Angeles, CA 90067-3206
Tel: (312) 392-2000

and

MYERS, BRIER & KELLY, LLP
Donna A. Walsh (PA ID 74833)
Dan Brier (PA ID 53248)
425 Spruce Street, Suite 200
Scranton, PA 18503
Tel: (570) 342-6100

CROWELL & MORING LLP
Stefan M. Meisner (*pro hac vice*)
1001 Pennsylvania Avenue NW
Washington, DC 20004
Tel: (202) 624-2937

Attorneys for Defendant Geisinger Health

FOR DEFENDANT
EVANGELICAL COMMUNITY
HOSPITAL:

/s/
KING & SPALDING, LLP
Norman Armstrong, Jr. (*pro hac vice*)
Bobby R. Burchfield (*pro hac vice*)
Shannon M. Kasley (*pro hac vice*)
Christopher C. Yook (*pro hac vice*)
1700 Pennsylvania Avenue NW
Suite 200
Washington, DC 20006

and

MCNEES WALLACE & NURICK LLC
Carol Steinour Young (PA ID 55969)
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Attorneys for Evangelical Community Hospital

CERTIFICATE OF SERVICE

I, Natalie Melada, hereby certify that on May 17, 2021, I electronically filed the foregoing Joint Notice of Amended Proposed Final Judgment through the Court's CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ Natalie Melada
Natalie Melada
Trial Attorney
U.S. Department of Justice
Antitrust Division
Healthcare and Consumer Products Section
450 Fifth Street, NW, Suite 4100
Washington, DC 20530
natalie.melada@usdoj.gov